



## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

[Docket ID OCC-2022-0009]

### OCC Policy Statement on Minority Depository Institutions

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Policy statement.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its 2013 Policy Statement on Minority National Banks and Federal Savings Associations to update and streamline the description of its policies, procedures, and programs on minority depository institutions.

**DATES:** The issuance date of this policy statement is July 26, 2022.

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### SUPPLEMENTARY INFORMATION:

#### I. Introduction

The Office of the Comptroller of the Currency (OCC or agency) recognizes the vital role of minority depository institutions (MDIs) in supporting the economic viability of the communities they serve, including but not limited to the economic viability of the minority individuals,<sup>1</sup> women, or other socially and economically disadvantaged individuals in those

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<sup>1</sup> For purposes of this preamble, the word “individual” means a natural person, corporation, partnership, or entity.

communities. By providing access to credit and other financial services to those who otherwise might not have sufficient access, MDIs are essential to the well-being of disadvantaged and underserved communities across America.<sup>2</sup>

Over the past decade, the OCC has demonstrated significant support for national banks and Federal savings associations (collectively, banks) that the agency has designated as MDIs.<sup>3</sup> For example, since 2011, the agency has administered the Minority Depository Institutions Advisory Committee (MDIAC), which is comprised of officers and directors of OCC-supervised MDIs and other banks committed to supporting MDIs.<sup>4</sup> The MDIAC provides the OCC with insight on the unique challenges MDIs face and advises the agency on ways to help ensure their continued health and sustainability.

In 2013, the OCC issued a policy statement on MDIs (2013 Policy Statement), reaffirming its commitment to their creation and preservation.<sup>5</sup> The 2013 Policy Statement sets

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<sup>2</sup> Although MDIs account for a small share of banks and bank assets, a relatively large share of their branches and branch deposits are in socially vulnerable counties. *See, e.g., Minority Depository Institutions Have Vital Role Serving Vulnerable Communities*, Federal Reserve Bank of Dallas (Feb. 1, 2022), available at <https://www.dallasfed.org/research/economics/2022/0201>.

<sup>3</sup> “Designation” is the process by which the OCC classifies a bank as an MDI and is discussed in greater detail below.

<sup>4</sup> The MDIAC is a Federal advisory committee chartered under the Federal Advisory Committee Act. *See* 5 U.S.C. Appendix. The MDIAC replaced a similar advisory group established by the former Office of Thrift Supervision (OTS) prior to Congress’ transfer of OTS’ responsibilities for oversight of Federal savings associations to the OCC on July 21, 2011. *See* Title III, Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. 111-203, 124 Stat. 1376, 1520 (2010).

<sup>5</sup> Policy Statement on Minority National Banks and Federal Savings Associations (June 7, 2013), available at <https://www.occ.treas.gov/static/licensing/form-minority-owned-policy.pdf>. Previously, in 2001, the agency issued the Policy Statement on Minority-Owned National Banks, which (1) included information for persons interested in establishing an OCC-regulated MDI; (2) provided guidance on investing in MDIs; and (3) discussed available OCC examination support for MDIs. The 2001 policy statement defined “minority-owned bank” to include minority-owned or controlled national banks, as well as national banks owned, controlled, and operated by women, consistent with the U.S. Department of the Treasury’s Bank Deposit Program. *See* Exhibit E to A Guide to Tribal Ownership of a National Bank, available at <https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/a-guide-to-tribal-ownership-of-a-national-bank.html>.

out the agency's MDI designation process, explains how the agency supports MDIs, and provides other useful information to stakeholders and interested parties.

In 2020, the OCC formed Project REACH,<sup>6</sup> which brings together leaders from banking, business, technology, and civil rights organizations to reduce specific barriers that prevent full, equal, and fair participation in the nation's economy.<sup>7</sup> One focus of Project REACH is to strengthen MDIs through a dedicated workstream that seeks to identify and address operational impediments to MDI creation and growth. Among other things, Project REACH provides MDIs with targeted technical assistance and help developing executive exchange programs; improving access to cost effective and shared services; and establishing revenue-generating partnerships and collaborations. Also in 2020, Congress created the Emergency Capital Investment Program (ECIP), which directed nine billion dollars to MDIs and certified Community Development Financial Institutions to, among other things, provide financial assistance for businesses and consumers in disadvantaged and underserved communities disproportionately impacted by the economic effects of the COVID-19 pandemic.<sup>8</sup>

Following the formation of Project REACH and establishment of ECIP, the OCC witnessed increased interest from banks and other stakeholders in working with MDIs and the MDI designation process. In response, the agency undertook a review of the 2013 Policy Statement to determine whether clarifications or other changes were necessary. This revised policy statement is a result of that review.

## **II. Background**

Congress has long recognized the important role of MDIs in the U.S. banking system. For example, over 30 years ago, Congress enacted section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), which established goals to

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<sup>6</sup> Project REACH stands for the Roundtable for Economic Access and Change.

<sup>7</sup> Information about Project REACH is available at <https://www.occ.gov/topics/consumers-and-communities/minority-outreach/project-reach.html>.

<sup>8</sup> See Pub. L. 116-260, 134 Stat. 1182, 2079 (2020), codified at 12 U.S.C. 4703a.

preserve, promote, encourage, and provide for MDIs.<sup>9</sup> Specifically, section 308 directs the Secretary of the U.S. Department of the Treasury (Treasury) to consult with the Comptroller of the Currency, Chairman of the Board of Governors of the Federal Reserve System (Board), Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation (FDIC), and Chairman of the National Credit Union Administration (NCUA) on the methods for best (1) preserving the present number of MDIs; (2) preserving MDIs' minority character in cases of merger or acquisition; (3) providing technical assistance to help MDIs remain healthy; (4) promoting and encouraging the creation of new MDIs; and (5) providing MDIs with training, technical assistance, and educational programs.<sup>10</sup> Section 308 also requires each referenced agency to submit an annual report to Congress describing its actions to carry out these goals.<sup>11</sup>

For purposes of OCC-regulated entities, section 308(b)(1) of FIRREA defines "minority depository institution" as (1) a national bank or Federal stock<sup>12</sup> savings association that is at least 51 percent owned (the ownership threshold) by one or more socially and economically disadvantaged individuals or (2) a Federal mutual savings association in which the majority of its board of directors, its account holders, and the community it serves is predominantly minority.<sup>13</sup>

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<sup>9</sup> 12 U.S.C. 1463 (note).

<sup>10</sup> Prior to the Dodd-Frank Act, section 308 of FIRREA applied only to the FDIC and OTS. *See* Pub. L. 101-73, 103 Stat. 183, 353 (Aug. 9, 1989). Section 367 of the Dodd-Frank Act amended the scope of section 308 to include the OCC, Board, and NCUA and to remove the OTS. *See* Dodd-Frank Act, 124 Stat. at 1556. It should be noted, however, that the OCC recognized MDIs long before its inclusion in the scope of section 308.

<sup>11</sup> Congress added this requirement to FIRREA in section 367(4)(B) of the Dodd-Frank Act. *See* 124 Stat. at 1556. The OCC's 2020 Report to Congress on Preserving and Promoting Minority Depository Institutions is available at <https://www.occ.gov/publications-and-resources/publications/banker-education/files/2020-report-to-congress-minority-depository-instit.html>.

<sup>12</sup> Section 308(b) of FIRREA uses the terms "privately owned" MDI and "publicly owned" MDI and distinguishes these MDIs from MDIs that are mutual savings associations. In this preamble and the revised policy statement, the OCC uses the term "stock" to capture both privately and publicly owned MDIs and to distinguish them from MDIs that are mutual savings associations. A Federal stock savings association may be publicly or privately owned.

<sup>13</sup> Other federal statutes include other definitions of MDI. *See, e.g.*, 12 U.S.C. 2907. As a matter of policy, Federal agencies also recognize MDIs other than those specifically identified in section 308 of FIRREA. This includes OCC recognition of (1) Federal mutual savings associations where women comprise a majority of the Board of Directors and hold a significant

Section 308(b)(2) of FIRREA defines “minority” as “any black American, Native American, Hispanic American, or Asian American.” The statute does not define “socially and economically disadvantaged individuals.”

As noted previously, the OCC’s 2013 Policy Statement sets forth the agency’s policy with respect to MDIs. It (1) incorporates the definitions of MDI from section 308 of FIRREA; (2) describes other Federal mutual savings associations that the OCC recognizes as MDIs as a matter of policy; and (3) recognizes the agency’s discretion to treat previously designated national banks that no longer meet the ownership threshold as MDIs if they primarily serve the credit and other economic needs of a predominantly minority community. The 2013 Policy Statement defines “minority”<sup>14</sup> in the same way it is defined in section 308 of FIRREA and, also like section 308, does not define “socially and economically disadvantaged individuals.” The 2013 Policy Statement also (1) includes information about forming an OCC-supervised MDI; (2) describes the OCC’s examination support for MDIs; (3) discusses banks’ investments in MDIs pursuant to their respective investment authorities; (4) sets forth the agency’s goals in the event of resolution of an MDI; (5) explains the role of the Community Reinvestment Act (CRA) in supporting MDIs; (6) describes the role and responsibilities of the MDIAC and other outreach efforts; (7) explains the information, education, and outreach resources available to MDIs from the OCC; and (8) explains that the OCC submits an annual report to Congress.

### **III. Revised Policy Statement**

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percentage of senior management positions; and (2) previously designated MDIs, both as described in the OCC’s current policy statement. In addition, the Board and the FDIC consider a bank to be an MDI if a majority of the bank’s board of directors consists of minority individuals and the community that the bank serves is predominantly minority.

<sup>14</sup> The 2013 Policy Statement defines “minority” in essentially the same way that section 308 of FIRREA defines the term, except that FIRREA uses the term “black American” and the 2013 Policy Statement uses the term “African American.” For the purposes of this preamble and the revised policy statement, the OCC does not interpret this difference to be materially significant.

The OCC is issuing this revised policy statement, which replaces its 2013 Policy Statement, to update the description of the agency’s MDI policies, procedures, and programs, including by removing obsolete references and streamlining the document.

***Section 1. Introduction.*** The 2013 Policy Statement begins by recognizing the important role of MDIs in the communities they serve and affirming the agency’s commitment to MDIs. In a section entitled “Statutory Framework,” the OCC describes the goals of section 308 of FIRREA and the agency’s commitment to these goals. Similarly, the revised policy statement begins by recognizing the important role of MDIs in the communities they serve and affirming both the OCC’s support for MDIs and the goals of section 308 of FIRREA.

***Section 2. Meaning of MDI.*** In the “Definition of MDIs” section, the 2013 Policy Statement defines a “minority depository institution” as a national bank or Federal stock savings association that (1) is not a U.S. subsidiary of a foreign-owned bank and (2) is at least 51 percent owned by minorities, women, or socially and economically disadvantaged individuals. In this same section, the 2013 Policy Statement also states that when evaluating a Federal mutual savings association, the OCC may consider whether (1) the majority of its Board of Directors is minority and the communities it serves are predominantly minority or (2) women comprise a majority of its Board of Directors and hold a significant percentage of its senior management positions. The 2013 Policy Statement also states that the OCC, at its discretion, may continue to treat a national bank or Federal savings association previously designated as an MDI as covered by the policy statement even if the bank no longer meets the ownership threshold, provided it primarily serves the credit and other economic needs of the community in which it is chartered, and the community is predominantly minority.

**Structural changes.** The OCC has made a number of changes to streamline and clarify this section. First, the revised policy statement divides the discussion of types of MDIs into subsection A (which discusses national banks and Federal stock savings associations that are

MDIs) and subsection B (which discusses Federal mutual savings associations that are MDIs).<sup>15</sup>

Second, the revised policy statement moves the discussion about previously designated MDIs into section 3 (entitled “Formation, Designation, and On-Going Review”), where all designation issues are addressed.

Minority individuals. As noted above, the 2013 Policy Statement defines and uses the word “minority” to reference four categories of individuals (African Americans, Asian Americans, Hispanic Americans, and Native Americans). The 2013 Policy Statement also uses the word “minority” as part of the term “minority depository institution” but, in this context, “minority” may have several possible meanings. To address any confusion caused by the use of the word “minority,” the revised policy statement uses (1) “minority individual” to mean the four categories of individuals discussed above and (2) “minority” to mean minority individuals, women, and other socially and economically disadvantaged individuals, including when “minority” is used in “minority depository institution.” The OCC does not intend for these changes to have a substantive effect but believes they clarify the document.

Federal mutual savings associations. The 2013 Policy Statement provides that the OCC may consider two categories of Federal mutual savings associations as MDIs. The first category is a Federal mutual savings association where a majority of its Board of Directors and the community it serves are predominantly minority. This description largely mirrors the definition in section 308 of FIRREA for MDIs that are Federal mutual savings associations, except that the statute also requires that the majority of savings association’s account holders are minority individuals. In order to make this reference consistent with section 308, the revised policy statement adds the account holder element to this description.

Second, the 2013 Policy Statement provides that the OCC may consider a Federal mutual savings association an MDI if women comprise a majority of its Board of Directors and hold a

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<sup>15</sup> The revised policy statement also moves the statement that an MDI may not be a U.S. subsidiary of a foreign-owned bank to a footnote. Under both the 2013 Policy Statement and the revised policy statement, this requirement applies to all MDIs in all situations.

significant percentage of its senior management positions. In the revised policy statement, the OCC expands this category of MDIs to include Federal mutual savings associations if (1) minority individuals or (2) other socially and economically disadvantaged individuals comprise a majority of the Board of Directors and hold a significant percentage of the senior management positions. The OCC is not aware of any reason to limit these composition requirements to women-led mutual MDIs. By expanding the definition, the revised policy statement creates parity for all Federal mutual savings associations covered and encourages the creation of new MDIs. Therefore, under the revised policy statement, a bank can satisfy its ownership threshold or composition component (as applicable, depending on whether the bank is a national bank, Federal stock savings association, or Federal mutual savings association) with reference to (1) minority individuals, (2) women, or (3) other socially and economically disadvantaged individuals.

Other socially and economically disadvantaged individuals. The 2013 Policy Statement references “minorities, women, and socially and economically disadvantaged individuals.” To clarify that minority individuals (which, as discussed above, references African Americans, Asian Americans, Hispanic Americans, and Native Americans) and women are examples of individuals that the OCC has determined are “socially and economically disadvantaged,” the revised policy statement includes the word “other” before the term “socially and economically disadvantaged individuals.”

***Section 3. Formation, Designation, and On-Going Review.*** In a section entitled “Formation of MDIs,” the 2013 Policy Statement briefly outlines some of the types of advice and technical assistance the OCC provides to individuals interested in a bank charter and an MDI designation. It also explains that certain MDIs may be eligible for designation as a community development bank and why this is advantageous. The 2013 Policy Statement does not explain how an MDI is formed or designated. The OCC believes that this information would be helpful

to stakeholders and other interested parties, and the revised policy statement includes a discussion of these topics.

De novo bank formation and designation. Specifically, in subsection A of section 3, the revised policy statement explains that the process of forming a de novo bank designated as an MDI involves two steps: an applicant must (1) file an application and receive approval to form a bank and then (2) request to be designated as an MDI. If the OCC determines that all of the applicable requirements are met, the OCC will provide (1) a letter approving the formation of the bank and (2) a separate letter approving the MDI designation. The revised policy statement also explains that for individuals interested in this process, the OCC offers advice and technical assistance, including through pre-filing and exploratory meetings, and directs requests for assistance to OCC Licensing.

Designation of existing banks. In subsection B of section 3, the revised policy statement explains that an existing bank that believes it qualifies as an MDI also may request designation from the OCC. If the OCC determines that the bank satisfies the applicable requirements, the agency will provide the bank with an MDI designation letter. The revised policy statement explains that the OCC offers advice and technical assistance to banks interested in MDI designation and explains that requests for assistance should be directed to the MDIAC Designated Federal Officer.

Continued designation. The “Definition of MDIs” section of the 2013 Policy Statement states that the OCC, at its discretion, may continue to treat a previously designated bank as an MDI even if the bank no longer meets the “ownership” threshold, provided that (1) the bank primarily serves the credit and other economic needs of the community in which it is chartered and (2) the community is predominantly minority. In subsection C of section 3, the revised policy statement addresses continued designation but includes several changes from the 2013 Policy Statement.

First, by referencing “ownership,” the 2013 Policy Statement limits the continued designation option to national banks and Federal stock savings association, to the exclusion of Federal mutual savings associations. The OCC is not aware of any reason that continued designation should exclude Federal mutual savings associations, and the revised policy statement provides that the OCC can exercise its discretion to continue to designate a previously designated bank, regardless of the type of bank.

Second, the 2013 Policy Statement provides the OCC with discretion to treat a bank previously designated as an MDI as covered by the 2013 Policy Statement, even if the bank no longer meets the ownership criteria, if (1) the bank primarily serves the credit and other economic needs of the community in which it is chartered; and (2) the bank’s community is predominantly minority. In the revised policy statement, the OCC revises the wording of both prongs of this statement. Specifically, prong (1) states that the agency has the discretion to continue to designate a bank as an MDI if the bank “supports the economic viability” of its community. The agency believes that this change more effectively highlights the important role of MDIs in supporting the economic viability of their communities, of which the services the MDIs provide may only be a part. Prong (2) of the revised policy statement provides that continued designation is possible if the community the bank serves is comprised predominantly of minority individuals, women, or other socially and economically disadvantaged individuals. This change reflects the fact that the communities MDIs serve include not only minority individuals, but also women and other socially and economically disadvantaged individuals.

On-going review. The revised policy statement explains that the OCC, on an annual basis, reviews whether a bank designated as an MDI continues to satisfy the meaning of MDI described in section 2 or whether continued designation is appropriate. Although there is no similar provision in the 2013 Policy Statement, this practice ensures that banks designated as MDIs continue to merit such designation.

Community development banks. Finally, as noted previously, the 2013 Policy Statement includes a discussion of community development banks. In the revised policy statement, the OCC removes this discussion because it is outside of the scope of this policy statement. This change has, however, no substantive effect.

***Section 4. List of OCC-Supervised MDIs and Related Information.*** Both the 2013 Policy Statement and the revised policy statement state that the OCC maintains a list of the MDIs it supervises, along with related information, at [www.occ.gov](http://www.occ.gov). There are no material changes to this section.

***Section 5. Support for MDIs.*** In a section entitled “Examination Support for MDIs,” the 2013 Policy Statement explains that the OCC annually develops a supervisory strategy for each MDI based on its unique risk profile and need for technical assistance, training, and education. This section also outlines how the OCC assigns managers, examiners, and expert advisors responsible for MDI supervision; provides guidance to MDIs; exchanges relevant information and best practices; and keeps up-to-date on important topics and emerging concerns about MDIs.

The revised policy statement includes several structural changes to this section. It changes the section’s heading to “Support for MDIs” to align with its focus and moves information related to MDI strategy and support from the 2013 Policy Statement’s “Resolution” section to this section. The revised policy statement also sets forth examples of support provided to MDIs in section 5, as well as streamlines the information presented, as necessary to promote greater clarity and transparency.

The 2013 Policy Statement includes a section entitled “Capital for MDIs,” which states that the OCC supports banks’ investments in MDIs pursuant to their public welfare investment authorities and such investments may receive positive consideration under CRA. In another section, entitled “Supporting MDIs through the Community Reinvestment Act,” the 2013 Policy Statement notes that majority-owned institutions are often key partners with MDIs and that, for purposes of CRA, the OCC considers capital investment, loan participation, and other ventures

undertaken in cooperation with MDIs, if such activities help meet the credit needs of the MDIs' communities.

In the revised policy statement, the information from these two sections is combined and updated in new section 5. The revised section acknowledges that depository institutions that are not MDIs (non-minority depository institutions or NMDIs) are often key partners with MDIs and notes that the OCC actively supports relationships between MDIs and NMDIs and provides resources to help identify relevant partnership opportunities.

This section also provides a streamlined description of the types of support that a NMDI can provide to MDIs. It provides examples of direct and indirect financial support that NMDIs can provide through an applicable investment authority, including investing in MDI-issued subordinated debt; placing deposit funds in an MDI; purchasing MDI-issued capital stock; and engaging in a loan participation with an MDI. It also describes other types of support an NMDI can provide, including collaborating with MDIs on products and services (*e.g.*, in-kind services that aid an MDI in serving its customers) and contributing excess real estate to MDIs (*e.g.*, surplus branch facilities). These examples are intended to provide stakeholders with clear and useful information.

In addition, the revised policy statement states that the OCC considers capital investments, loan participations, and other ventures undertaken by NMDIs in cooperation with minority- and women-owned financial institutions and low-income credit unions,<sup>16</sup> provided the activities help meet the credit needs of the local communities served by the financial institutions or credit unions. In addition, as discussed in the revised policy statement, NMDIs that invest in MDIs may receive positive consideration under the CRA.

***Section 6. Attribution of Investments for Purposes of the Ownership Threshold.*** The 2013 Policy Statement does not address when an individual's investment in an MDI can be attributed to the MDI for purposes of the ownership threshold. To address this issue, the revised

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<sup>16</sup> See 12 U.S.C. 2903(b).

policy statement states that an investment in an MDI by a natural person may be attributed to the MDI ownership threshold only if the natural person is a minority individual, woman, or other socially and economically disadvantaged individual.<sup>17</sup> An investment in an MDI by a corporation, partnership, or other entity may be attributed to the MDI ownership threshold only if the corporation, partnership, or entity is (1) also an MDI or (2) at least 51 percent owned by one or more minority individuals, women, or other socially and economically disadvantaged individuals. The revised policy statement includes in a footnote an example of how this method of attribution would work, stating that an investment in an MDI by a private equity fund would count toward the 51 percent ownership threshold requirement only if the fund itself is at least 51 percent owned by one or more minority individuals, women, or other socially and economically disadvantaged individuals. This method of attribution is designed to ensure that the special character of an MDI is not diluted by investments in the MDI.

***Section 7. Resolution of Supervisory Cases.*** The 2013 Policy Statement explains that in resolving a supervisory case involving an MDI, the OCC encourages remedies, including mergers and acquisitions, which are consistent with the MDI's safety and soundness and the goal of maintaining its minority ownership. The revised policy statement includes a similar explanation, streamlined for clarity, stating that in the unlikely event that the OCC must resolve an MDI, the agency seeks remedies (including mergers and acquisitions) that are consistent with and aim to maintain the MDI's safety and soundness and its character, in accordance with the goals of section 308 of FIRREA. These changes do not signal a policy change.

***Section 8. The MDIAC and Other MDI-Focused Initiatives.*** The 2013 Policy Statement includes a discussion of OCC initiatives that, as of 2013, provided support to MDIs and helped inform agency decision-making with respect to MDIs. The revised policy statement updates this information and removes obsolete references where appropriate. Specifically, the

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<sup>17</sup> As noted previously, (1) "individual" means a natural person, corporation, partnership or entity and (2) "woman" and "women" incorporate the definition of "individual" and are not limited to natural persons.

revised policy statement discusses (1) the MDIAC, including the role of the MDIAC Designated Federal Officer; (2) the OCC's Director of Minority Outreach; (3) the agency's Minority Depository Institution Collaboration Initiative; (4) Project REACH; and (5) the OCC's District Community Affairs Officers.

***Section 9. Consultation and Annual Report.*** The 2013 Policy Statement states that the OCC consults with the Secretary of the Treasury on achieving the goals of section 308 of FIRREA and, as required by law, submits an annual report to Congress on actions taken to carry out those goals. The revised policy statement includes this information and adds that the OCC's Director of Minority Outreach is responsible for submitting the annual report to Congress.

***Section 10. Conclusion.*** Both the 2013 Policy Statement and the revised policy statement conclude with a statement of support for MDIs.

The text of the policy statement is as follows:

### **OCC Policy Statement on Minority Depository Institutions**

#### **1. Introduction**

Minority depository institutions (MDIs) are national banks and Federal savings associations (banks) that support the economic viability of the communities they serve, including but not limited to the minority individuals, women, or other socially and economically disadvantaged individuals in those communities.

The Office of the Comptroller of the Currency (OCC or agency) recognizes the important role of MDIs in the communities they serve and, consistent with the agency's mission to ensure a safe and sound Federal banking system, the OCC actively supports MDIs through a number of initiatives. The agency's efforts to support MDIs also reflect its commitment to the goals of

section 308 of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).<sup>1</sup>

## 2. Meaning of MDI<sup>2</sup>

A. *National banks or Federal stock savings associations.*<sup>3</sup> The OCC defines an MDI to include a national bank or Federal stock savings association that is at least 51 percent owned by one or more minority individuals, women, or other socially and economically disadvantaged individuals.<sup>4</sup>

B. *Federal mutual savings associations.* The OCC—

- i. Defines an MDI to include a Federal mutual savings association (1) where minority individuals comprise a majority of both its Board of Directors and its account holders and (2) that serves the credit and other economic needs of a community comprised predominantly of minority individuals; and
- ii. Considers a Federal mutual savings association to be an MDI if (1) a majority of its Board of Directors is comprised of minority individuals, women, or other socially and economically disadvantaged individuals and (2) minority individuals, women, or other socially and economically disadvantaged individuals hold a significant percentage of its senior

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<sup>1</sup> 12 U.S.C. 1463 (note). The goals of section 308 are to preserve the number of MDIs; preserve MDIs minority character in cases of merger or acquisition; provide technical assistance to help MDIs remain healthy; promote and encourage the creation of new MDIs; and provide training, technical assistance, and educational programs.

<sup>2</sup> In addition to the other requirements discussed in this policy statement, an MDI may not be a U.S. subsidiary of a foreign-owned bank.

<sup>3</sup> A Federal stock savings association may be publicly or privately owned.

<sup>4</sup> For purposes of this policy statement, “individual” means a natural person, corporation, partnership or entity. “Minority individual” means a black American, Native American, Hispanic American, or Asian American individual. Therefore, a bank that is owned by a minority-owned corporation is owned by a minority individual. “Women” incorporates the definition of “individual” and is not limited to natural persons. Therefore, a bank that is owned by a women-owned corporation is owned by women.

management positions.

### **3. Formation, Designation, and On-Going Review**

- A. De novo bank formation and designation.* The process of forming a de novo bank that is designated as an MDI involves two steps: an applicant must (1) file an application and receive approval to form a bank and (2) request that the bank be designated as an MDI. If the OCC determines that all of the applicable requirements are met, the OCC will provide (1) a letter approving the formation of a bank and (2) a separate MDI designation letter. For individuals interested in this process, the OCC offers advice and technical assistance, including guidance on determining whether the applicant satisfies the meaning of MDI as set forth in section 2 of this policy statement, through pre-filing and exploratory meetings. Requests for assistance should be directed to OCC Licensing.
- B. Designation of existing banks.* A bank that believes it satisfies the meaning of MDI as set forth in section 2 of this policy statement may request the OCC designate it as an MDI. If the OCC determines the bank satisfies the meaning of MDI, the agency will provide the bank with an MDI designation letter. For banks interested in this process, the OCC offers advice and technical assistance, including guidance on determining whether the bank satisfies the meaning of MDI. Requests for assistance should be directed to the Minority Depository Institution Advisory Committee Designated Federal Officer.
- C. Continued designation.* At its discretion, the OCC may continue to designate as an MDI a bank that no longer satisfies the meaning of MDI as set forth in section 2 of this policy statement if the bank supports the economic viability of a community comprised predominantly of minority individuals, women, or other socially and economically disadvantaged individuals.
- D. On-going review.* On an annual basis, the OCC reviews whether (1) a bank designated as an MDI continues to satisfy the meaning of MDI as set forth in section

2 of this policy statement or (2) continued designation is appropriate.

#### **4. List of OCC-Supervised MDIs and Related Information**

The OCC maintains a list of OCC-supervised MDIs and information about MDI initiatives and related events on its website at [www.occ.gov](http://www.occ.gov).

#### **5. Support for MDIs**

The OCC develops an annual strategy to support MDIs. The strategy is designed to support their financial vitality and safe and sound operations and to address unique risks facing MDIs. As needed, the OCC supports MDIs by providing training, technical assistance, and educational programs in such areas as compliance, risk management, and operations.

The OCC recognizes that depository institutions that are not MDIs (non-minority depository institutions or NMDIs) can be key partners with MDIs. The agency actively supports these relationships, which can be valuable tools for assisting MDIs, and provides resources to help identify relevant partnership opportunities.

For example, NMDIs may provide direct or indirect financial support for MDIs through an applicable investment authority.<sup>5</sup> This type of support includes an NMDI (1) investing in subordinated debt issued by an MDI; (2) placing deposit funds in an MDI; (3) purchasing MDI-issued capital stock (*e.g.*, common or preferred stock); and (4) engaging in a loan participation with an MDI. Other types of support that an NMDI can offer include collaborating with an MDI on products and services (*e.g.*, in-kind services that aid an MDI in serving its customers) and contributing excess real estate to an MDI (*e.g.*, surplus branch facilities).

In assessing the record of an NMDI under the Community Reinvestment Act (CRA) and its

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<sup>5</sup> *See, e.g.*, national banks' public welfare investment authority (12 CFR part 24) and Federal savings associations' community development investment authority (12 CFR 160.36).

implementing regulations,<sup>6</sup> the OCC considers capital investments, loan participations, and other ventures undertaken in cooperation with minority- and women-owned financial institutions and low-income credit unions if such activities help meet the credit needs of the local communities served by the MDI or low-income credit union. NMDIs that invest in MDIs may receive positive consideration under the CRA if those investments are consistent with the requirements of the CRA and its implementing regulations.

#### **6. Attribution of Investments for Purposes of the Ownership Threshold**

An investment in an MDI by a natural person may be attributed to the MDI ownership threshold only if the natural person is a minority individual, woman, or other socially and economically disadvantaged individual.

An investment in an MDI by a corporation, partnership, or entity may be attributed to the MDI ownership threshold only if the corporation, partnership, or entity is (1) also an MDI or (2) at least 51 percent owned by one or more minority individuals, women, or other socially and economically disadvantaged individuals.<sup>7</sup>

#### **7. Resolution of Supervisory Cases**

In the unlikely event that it is necessary to resolve an MDI, the OCC seeks remedies (including mergers and acquisitions) that are consistent with and aim to maintain the MDI's safety and soundness and its character, in accordance with the goals of section 308 of FIRREA.

#### **8. Minority Depository Institution Advisory Committee and Other MDI-**

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<sup>6</sup> See 12 U.S.C. 2901 et seq. and 12 CFR part 25.

<sup>7</sup> See *supra* note 4 (meaning of “individual,” “minority individual,” and “women”). For example, an investment in an MDI by a private equity fund would count toward the 51 percent ownership threshold only if the fund itself is at least 51 percent owned by one or more minority individuals, women, or other socially and economically disadvantaged individuals.

## **Focused Initiatives**

In addition to the initiatives discussed above, the OCC's Minority Depository Institution Advisory Committee (MDIAC) and other MDI-focused initiatives also help to support MDIs. Information about these initiatives can be found on the website at [www.occ.gov](http://www.occ.gov) and include the following:

- A. MDIAC.* The MDIAC is an OCC-chartered advisory committee organized in accordance with the Federal Advisory Committee Act (FACA).<sup>8</sup> The MDIAC includes officers and directors of MDIs and other depository institutions committed to supporting MDIs and provides advice to the OCC on meeting the goals in section 308 of FIRREA. As required by FACA, the OCC has an MDIAC Designated Federal Officer, who is responsible for the MDIAC and serves as the OCC's primary point of contact on MDI matters.
- B. Director of Minority Outreach.* The OCC's Director of Minority Outreach coordinates the agency's interdepartmental and interagency outreach efforts, including interagency conferences and other activities.
- C. Minority Depository Institution Collaboration Initiative.* The OCC's Minority Depository Institution Collaboration Initiative promotes collaboration and relationships between MDIs and larger NMDIs and is designed to provide access to products and services that promote empowerment to disadvantaged and underserved communities, economic independence, job creation, and community development/revitalization. This initiative is coordinated by the OCC's Midsize and Community Bank Supervision (MCBS) staff.
- D. Project Roundtable for Economic Access and Change (REACH).* The OCC-established Project REACH promotes financial inclusion through greater access to credit and capital. Project REACH brings together leaders from the banking industry, national civil rights

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<sup>8</sup> See 5 U.S.C. appendix 2.

organizations, other businesses, and the technology industry to reduce specific barriers that prevent full, equal, and fair participation in the nation's economy. Project REACH supports MDIs through its MDI Revitalization Workstream, which addresses the challenges MDIs face in accessing capital, expanding technology capabilities, and modernizing infrastructure. Project REACH is coordinated by the OCC's Director of Minority Outreach. Information on Project REACH is available at Project REACH.

*E. District Community Affairs Officers.* The OCC's District Community Affairs Officers provide advice and technical assistance to MDIs interested in structuring community development investments and initiatives and identifying opportunities for relationships between NMDIs and MDIs.

## **9. Consultation and Annual Report**

The Secretary of the U.S. Department of the Treasury consults with the Comptroller of the Currency, under section 308 of FIRREA, on the methods for best achieving the goals of section 308 of FIRREA. The law also directs the OCC to submit an annual report to Congress on the actions taken to carry out these goals. The OCC's Director of Minority Outreach is responsible for submitting the annual report to Congress.

## **10. Conclusion**

The OCC recognizes the important role of MDIs in the communities they serve and actively supports MDIs through the initiatives discussed above.

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Date: July 26, 2022.

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[FR Doc. 2022-16345 Filed: 7/29/2022 8:45 am; Publication Date: 8/1/2022]